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STATUS OF THE CLAIMS

Claims 9-17 and 19-31 were pending.

Claims 28-31 have been rejected under 35 U.S.C. §112 for failing to comply with the written description requirement.

Claims 9-15 and 19-25 and 28-31 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eden, et al (US 4,874,628).

Claims 9, 16, 17, 19, 26 and 27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eden, et al (US 4,874,628) in view of Jeffcoat, et al. (US 6,488,980), Park (US 4,784,871), or Yuan (US 6,017,388).

Claims 9, 19 and 28 have been amended.

Claims 10, 20 and 29 have been cancelled.

Claim 32 has been added.

Claims 9, 11-17, 19, 21-28 and 30-32 are presented for reconsideration.

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**REMARKS**

Claims 9, 19 and 28 have been amended by including the limitations of claims 10, 20 and 29, which have been cancelled. Further, claim 9 has been amended to include the limitation that the composition is gel forming, descriptive basis for which may be found in the specification at paragraph [0024].

Claim 32 has been added, descriptive basis for which may be found in the specification at paragraphs [0024] and [0030] and original claim 9.

Claims 28-31 have been rejected under 35 U.S.C. §112 for failing to comply with the written description requirement as the Examiner states there is "no support in the original disclosure for the starch consisting essentially of a sago starch." The specification, as filed, did not include any other starch and all the examples include only sago starch. Thus, the specification did include support for the starch consisting essentially of a sago starch and the rejection has been overcome.

Claims 9-15 and 19-25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eden, et al (US 4,874,628). Applicants traverse.

The application claims a composition comprising a sago starch with a water fluidity (WF) of from about 40 to 80, and water and a method of increasing gel strength by using such sago fluidity starch, wherein the composition has at least about the same gel strength as a composition comprising 30% more of a comparable WF corn starch.

Sago starch which has been converted to the claimed WF is patentable in that it unexpectedly gels to form a strong gel, compared to other bases which have been similarly converted. See Figures 1 and 2 of the present application which compare gel strength of fluidity starches of different bases at a variety of WF values. Sago starch which has been converted to the claimed WF is also patentable in that it gels more quickly compared to other bases which have been similarly converted. See Figures 3-5 of the present application which compare gelling time, as indicated by an increase in viscosity, of fluidity starches of different bases at a variety of WF values.

Eden discloses a process of making gum confections by using high amylose starch alone or in combination with up to about 9 parts of a converted (fluidity) starch, a sweetener and water (Eden, col. 2, lines 51-60). The converted starches used in combination with the high amylose starches are chosen from starch bases other than high amylose starches, such as corn, potato, sweet potato, rice, sago, tapioca, waxy maize, sorghum, and the like (Eden, col. 6, lines 45-49). Acid hydrolyzed or oxidized corn, sorghum, and wheat starches are preferably used, with acid-hydrolyzed corn starch being the most preferred (Eden, col. 6, lines 51-56). Eden has ten examples, many with numerous compositions disclosed. However, none use a fluidity sago starch.

Thus, it is clear that not only does Eden not recognize that sago is superior to the other sources, but Eden teaches away from sago by stating that corn, sorghum and wheat are preferable, with corn the most preferable (col. 6, lines 51-56).

The superiority of the sago starch compared to other starches is shown in the Hanchett declaration, in which Mr. Hanchett explains that sago has an unexpectedly superior gel strength, up to more than eight times stronger than the fluidity corn of Eden, and a faster gelling time, about 10 minutes faster than the fluidity corn of Eden. Mr. Hanchett concludes that "there is clear proof that the fluidity sago starches of the present invention are superior to other fluidity starches, particularly the fluidity corn starch of Eden. The superiority lies in the unexpected high gel strength and the fast gelling time. Such high gel strength and fast gelling time is desirable in many applications, including the jelly gum confections taught by Eden."

As detailed above, Eden not only does not recognize the superiority of sago starch, but he teaches away from using sago starch and does not actually try sago starch. Thus, at best, Eden gives only general guidance and is not at all specific as to the particular form of the claimed invention. Eden discloses numerous compounds. First he discloses starch in general, listing eight specific starches. Second, he implies that any degree of conversion may

be used with these starches. A disclosure of such a multitude of compounds would not render obvious a claim limited to simply a few, particularly when such disclosure indicates a preference leading away from the claimed compounds. Third, it is clear from the Hanchett declaration that the fluidity sago of the present invention forms superior gels and gels faster than the preferred fluidity corn of Eden. Fourth, this superior gelling, as claimed in the presently presented claims, is not recognized by Eden. Thus, it is clear that the invention is unobvious over Eden.

The Examiner was unpersuaded because "Eden et al clearly expresses a preference for using sago starch as a viable alternative to those starches used in the examples." As stated above, Eden does not express a preference for sago, clearly stating at col. 6, lines 51-56 that corn, sorghum and wheat are preferable, with corn the most preferable.

The Examiner continues by stating the Hanchett declaration is unconvincing because "Eden et al explicitly recognizes that sago starch is substantially equivalent to other starches in the process and product." However, the Hanchett declaration clearly proves that sago is not substantially equivalent to other starches in the process and product, proving the superiority of sago starch to corn, potato and tapioca. Thus, Applicants have clearly supported their position that fluidity sago starches form superior gelling compositions to comparable fluidity starches of other bases.

An Examiner cannot question examples or results unless there is reasonable basis for questioning. Applicant has not only shown the superiority in specification examples, but has also provided a declaration under Rule 132 which compares the presently claimed sago starch to the closest example in Eden (a fluidity corn starch). Superiority of a property rebuts a *prima facie* showing of obviousness. Applicants have not only met the burden of establishing that the superiority is real, but have also explained the importance of such superiority in the industry. The Examiner has not questioned the declaration, and has not provided any reasoning other than that the art states that the starches are equivalent. However, it is clear that Eden states that the

starch are not equivalent (he actually prefers corn) and that Eden provides no experimental data to show the allegedly equivalence of the starches. In contrast, the present invention clearly shows the superiority of sago starch. Thus, unless the Examiner has evidence to the contrary, he must take the declaration at face value as proving the superiority of sago starch and the rejection has been overcome.

Claims 28 and 30-31 are further limited in that they claim the starch consists essentially of the fluidity sago starch. In Examples VII and VIII of Eden, it is shown that the high amylose corn starch gives the gelling property to the confectionary dispersion, not the unconverted corn starch. In Example VII, it is shown that the pregelatinized high amylose corn starch confection had a gel strength of  $361 \text{ g/mc}^2$ . In contrast, Table V of Example VIII shows that a 65 WF corn starch confection had a gel strength of only  $47 \text{ g/cm}^2$ . The importance of the high amylose corn starch in providing the gelling property is also stated in the background of Eden (col. 2, lines 35-36). Thus, it is clear that Eden teaches that the high amylose corn starch is responsible for the gel strength and indicates that a 65 WF corn starch is inadequate to provide the required gel strength. In contrast, the sago starch of the present invention does provide the required gel strength with the use of a high amylose corn starch. Thus, claims 28 and 30-31 are further patentable in that they exclude the use of a high amylose corn starch, which is shown by Eden to be essential to gel strength.

Claims 9, 16, 17, 19, 26 and 27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eden, et al (US 4,874,628) in view of Jeffcoat, et al. (US 6,488,980), Park (US 4,784,871), or Yuan (US 6,017,388). The addition of Jeffcoat, Park or Yuan does not remedy the deficiencies of Eden.

Jeffcoat discloses stabilized or stabilized crosslinked waxy potato starches as thickeners for food compositions (Jeffcoat, abstract). Jeffcoat does not teach sago starches, much less sago starches with a water fluidity of about 40-80. Further, Jeffcoat teaches away from adding his starches to

increase the gel strength, stating that the configuration of amylopectin starches (those of his invention) "discourages reassociation so that gelling does not readily occur." (Jeffcoat, col. 1, lines 39-41).

Park discloses a method of making a calcium fortified yogurt in which stabilizers and thickeners such as starch may be added (Park, col. 2, lines 20-22). Starch may also be added as part of the fruit flavoring (Park, col. 2, lines 54-56). Park neither discloses that the starch may be sago, nor that it may have a fluidity in the range of about 40-80. Further, Park never mentions gelling.

Yuan discloses heating a starch in the presence of an emulsifier to form a complex which can be used in food products. The starch used can be native or debranched and "debranched or partially hydrolyzed amylo maize can be used, as well as common cornstarch, potato, tapioca, wheat, smooth pea, rice, sago, barley and oat starches." (Yuan, col. 3, lines 36-39 and 53-56). Yuan mentions sago as one of many base starches which may be used and never provides a range of water fluidities, in fact stating that native (unconverted) starch is preferred when making a gelled composition (Yuan, col. 2, lines 27-29). Further, although Yuan teaches that the starch-emulsifier composition may be in the form of a gel, Yuan specifically teaches away from the using the fluidity sago starch in that he states the use of an unconverted starch produces a better gel than using a hydrolyzed starch (Yuan, col. 2, lines 27-29).

Applicant submits the rejections have been overcome in view of the above arguments, that the Application is now in condition for allowance and respectfully requests early notice to that effect. If the Examiner is not persuaded, Applicants respectfully request an interview.

Respectfully submitted,



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